

**Remarks:**

Applicants have read and considered the Office Action dated April 2, 2009 and the references cited therein. Claims 4, 5, 7 and 8 have been amended. Claims 1-12 are currently pending. Reconsideration is hereby requested.

In the Action, claims 1, 2, 4-10 and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as being obvious over Lester. In addition, claims 3 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lester. The Office Action contends that the nozzle element is comprised of a first part 14 attached to a second part 16 made of different materials. The Office Action notes that there is a difference in the cross hatching in the drawings of Lester. The Office Action states that Figure 4 of Lester shows first and second parts being made of different materials and that it is inherent that one part will have different resilience than the other part. The Action also contends that it would have been obvious to one of ordinary skill in the art to make the first part out of a more resilient material so that it would be easily cleanable without danger of breakage.

Applicants assert that upon careful reading of the description related to Figure 4, it can be seen that the element referred to is nozzle 14. Applicants fail to find any discussion of element 16 and it appears to be simply an extra reference numeral. Therefore, it appears that the structure for the relied upon reference numeral 16 is actually the connector 31 for the hose 30 and is not part of the nozzle. Moreover, Applicants note that in column 3, lines 58-60, it is clear that the element 31 shown in Figure 4 is not the nozzle. This passage states:

*"a bulbous-type connector 31 or other suitable device, aids in securing the hose 30 to the air nozzle 14."*

As the Lester reference does not teach or suggest a nozzle with two parts and having two materials, Applicants assert that claim 1 patentably distinguishes over the Lester reference and any other prior art or combination thereof. Moreover, Applicants assert that although different hatching may be utilized, this does not necessarily indicate that different materials are being used. The hatching likely indicates that one portion is a nozzle while another is a connector. Moreover, Applicants assert that one of ordinary skill in the art would not infer that they are different materials as the shoulder of the connector 31 is discussed and material properties are mentioned. Lester states beginning at column 3, line 64:

*"As depicted in the drawings, the shoulder 31 is relatively wide and, consequently, gives sturdy, firm support. This results in a very strong union of parts - in fact, one which is practically indestructible - and so substantially eliminates the danger of nozzle fracture commonly encountered with other nebulizing devices."*

One of ordinary skill in the art would therefore assume that the nozzle and the container, as well as the connector would be made out of durable materials for greater reliability and improved performance.

Applicants assert that upon careful reading and proper identification of the elements of Lester, it can be seen that Lester does not teach or suggest each and every element recited in claim 1. Therefore, Applicants assert that the Office Action fails to establish a *prima facie* case of anticipation. Moreover, as each and every element of claim 1 would not be obvious in view of Lester, Applicants further assert that the *prima facie* case of obviousness has not been established. Applicants therefore assert that claim 1 patentably distinguishes over Lester or any other prior art or combination thereof. In addition, all other claims either depend either directly or indirectly from claim 1 and Applicants assert that the claims patentably distinguish over Lester and any other prior art and requests that the rejections be withdrawn.

A speedy and favorable action in the form of a Notice of Allowance is hereby solicited. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicants' representative at (612) 336-4728.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.



Respectfully submitted,

MERCHANT & GOULD P.C.

Dated: \_\_\_\_\_

8/3/09

By: \_\_\_\_\_

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